

**Grand Jury Final Report**

**October 2008 Term**

**Submitted to the  
Honorable Mark J. Fishburn  
Criminal Court Division IV**

**Davidson County, Tennessee**

**December 18, 2008**

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## Acknowledgements and Overview

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We, the Davidson County Grand Jurors for the December 2008 term, submit the following report as a summary of the past three months. We would first like to thank our Foreman, Richard Hillenbrand, for guiding us through the judicial process. He explained the legal issues behind the facts presented, respectfully answered all of our questions and trusted our decisions when we felt certain cases needed further review. Next, we would like to thank District Attorney General Victor "Torry" Johnson III and his staff: Mary Houseman, Rodney Faulk, John Henry; as well as Sonja Newbell and Lori Hooberry, who prepared the daily dockets and witnesses. In addition, thanks to Holly Leach in Judge Fishburn's office who facilitated communication between the members and the foreman to make sure all deliberations were fully staffed, ensured that the jurors received their paychecks and had all necessary supplies.

### PURPOSE AND AUTHORITY OF THE GRAND JURY

The authority of the Grand Jury is found in the *Tennessee Rules of Criminal Procedure* 6(d)(e)(1)-(7), which charges it to:

inquire into, consider, and act upon all criminal cases submitted to it by the district attorney general;

inquire into any report of a criminal offense brought to its attention by a member of the grand jury;

inquire into the condition and management of prisons and other county buildings and institutions within the county;

inquire into the condition of the county treasury;

inquire into the correctness and sufficiency of the bonds of county officers;

inquire into any abuse of office by state or local officers; and,

report the results of its actions to the court.

On September 15, 2008, Judge Mark J. Fishburn impaneled a group of 12 regular jurors and 12 alternates for the Fall 2008 term to meet three days per week. The first cases were heard on October 6<sup>th</sup>, and to date the Jury has heard and decided 1,054 cases; returning 954 true bills, 19 no true bills, 78 sealed true bills and 3 sealed no true bills.

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## OBSERVATIONS AND COMMENTS

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### PRESENTATIONS

The following persons made presentations to the jurors in order for them to better understand the nature of the cases that would come before them.

#### District Attorney General Victor "Torry" Johnson III

On the first day that the jurors convened, District Attorney General Victor Johnson III gave a detailed presentation on what Grand Jury service entails. He started off his talk by saying that it was the responsibility of the jurors to make their employers understand the commitment that would be required of them by serving on the jury, and that it was imperative that the jurors arrive before 8:30 a.m. in order that the docket could proceed in a timely manner. District Attorney Johnson gave the jurors an overview of Tennessee criminal procedure, explaining that the Grand Jury looks primarily at felony cases, with its primary focus deciding if there is adequate probable cause for a case to proceed to criminal court. He stated that there were 80,000 to 85,000 arrest warrants issued in Davidson County last year and around 65,000 to 70,000 are misdemeanors in General Sessions Court.

#### Captain Rita Baker – MNP/Domestic Violence Division

Captain Rita Baker, Commander of Metro Nashville Police Department's Domestic Violence division, informed the Jury that Tennessee's domestic violence law is broad in that it encompasses a wide range of relationships; including boyfriend/girlfriend, roommates, past romantic relationships or parties related by blood or marriage. She explained that 20% of all emergency room visits are due to domestic violence. Captain Baker also showed the jury pictures of injuries caused by domestic violence and helped the jurors understand the difference between "primary" aggression and "dominant" aggression as it relates to domestic violence cases. She left information with the jurors on the services available from the Division.

#### Captain Todd Henry and Officer Mitch Fuhrer – Special Operations Investigation Section

Captain Henry and Officer Fuhrer gave the jurors a presentation on drug and gang issues throughout Metro Nashville. Some of the facts regarding gangs and drugs in Nashville include:

- Methamphetamine, or "meth", use is a greater problem in East and West Tennessee than in Nashville, whereas "crack" cocaine has a greater hold;

- Marijuana is the first drug of choice in Nashville, with 80% imported over the Mexican border;
- 80 to 85% of drug rehabilitation treatment is for prescription drug abuse;
- Gangs are unique to Nashville, as they are a “hybrid” of different types of gangs with outside influences and formed along racial lines. They also lack the organizational hierarchy of older, more established gangs;
- There is no state statute outlawing gang membership, and 10% of juvenile crimes are hardcore crimes.

#### Chief Ronal Serpas – Metropolitan Nashville Police Department

Chief Ronal Serpas presented the jury with a 34-page report detailing the police department's programs and the changes those programs have brought to the area police enforcement. The Metro Nashville Police Department is one of four Metro agencies and the largest in terms of programs and budget dollars.<sup>1</sup> Among the highlights of 2007 – 2008:

- MNPd was inspected by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and was found to be in total compliance with all mandatory and optional standards;
- All major crimes are down –including murder and aggravated assault – and property and burglary crimes are the lowest since 1979 and 1965, respectively;
- Four of the last five years' total accidents are down 10%, and fatal accidents are down 25%, with fatalities down 24%;
- DUI charges filed went up 32%;
- A new records management system will go online in 2009 that will allow officers to write reports in the field, with supervision, in real time;
- A new DNA/toxicology lab has been funded and a lab manager hired, which enables DNA tests to be done in the county rather than at TBI headquarters.

## **OFF-SITE VISITS**

### Police Training Academy

On October 28<sup>th</sup>, the jurors visited the Metro Nashville Police Training Academy. There, the jurors got a presentation on the different types of firearms used by the police force and an opportunity to shoot on the gun range. In addition, the jurors spoke with the motorcycle, horseback and helicopter patrols. The canine unit gave a demonstration of how its division works and how the dogs are selected and trained.

### Office of the Medical Examiner/Tennessee Bureau of Investigations

On November 7<sup>th</sup>, Bill Leftwich, Human Resources Director, gave the jury an overview and tour of the Office of the Medical Examiner. In addition to answering questions about how the Office operates, he took the jurors on a tour of the facilities and allowed them to view autopsies as they were taking place. After visiting the Office, the jurors took a tour of TBI headquarters, led by Jim Green, which they felt was very educational. The jurors were given a look into the labs and were very impressed by the facilities and the work done by the agents.

### Davidson County Sheriff's Office-Criminal Justice Center Detention Facility

The jurors toured the Davidson County Sheriff's Office (DCSO), which also houses the Criminal Justice Center Detention Facility. The jurors saw the booking and holding facilities for the inmates, including the floor where juvenile offenders are held. The jurors took note of the worn conditions of the building, but were satisfied with its overall cleanliness. In the course of the booking process, all arrestees are given a physical by medical staff at the jail before being placed in the general population; however AIDS/HIV testing is not part of the routine medical exam. When questioned as to why AIDS/HIV testing was not done, the officer stated that it was not a concern for him because he always wore gloves whenever he had to physically handle a prisoner.

### COMSTAT

The jurors had the opportunity on December 5<sup>th</sup> to observe a COMSTAT meeting at the North Precinct where each precinct reports to Chief Serpas and other commanders on the status of criminal activity in their respective areas.

### Riverbend Correctional Facility/Drug Court

Due to inclement weather, the jury's visit to the Riverbend Correctional Facility and Judge Seth Norman's Drug Court was cancelled and could not be rescheduled due to the lateness of the term.

## Juvenile Justice Detention Center

On December 14<sup>th</sup>, the jurors visited the Juvenile Justice Detention Center, which houses the Juvenile Court for Metropolitan Nashville Davidson County. The jurors met with Vic Lineweaver, Clerk of the Juvenile Court. Mr. Lineweaver explained that it is the duty of the Clerk to manage all civil and delinquent juvenile files, and that his office has 31 people on staff, lead by Julian Schloss. The Court oversees a \$3.5m victims' trust fund for children who have been abused by their parents and collects \$23-24m in child support. The Court has had several concerns in recent years; predominantly, files not being provided for court referees due to loss or misplacement. In 2005, a performance audit conducted by the National Center for State Courts, at the request of Metro Davidson County Government, offered over 90 recommendations to improve the overall efficiency and operation of the court; specifically in the management of case file information and tracking.<sup>2</sup>

Mr. Lineweaver explained that, within the last year, his staff has started scanning new files upon receipt as well as current ones for a total of 56,000 files, or 4 to 5%. He said that he has lost 2.5 positions to the scanning process, but hopes to have all files scanned within 5 to 6 months. When asked if the office considered contracting the scanning to an outside vendor, Mr. Lineweaver said that the office could not afford it and that even bar coding the files would be too expensive. However, Mr. Lineweaver said that the office received an \$8,000 grant from the Administrative Office of the Courts (AOC), as well as additional pooled funds, to install digital email for communication to the defendants' lawyers.

After meeting with Mr. Lineweaver, the jurors met with Judge Betty Adams Green who oversees the Court. Judge Green explained that the Court has two functions by serving as adjunct offices for the Public Defender and the District Attorney. There are three dockets in the Court: parentage, where DNA tests are conducted; an Order of Protection Docket that adjudicates issues between unmarried parents, and; an Emergency Docket where DCS files petitions for removal of children from the home when the child is in imminent danger. There is only one official judge, but there are seven appointed referees and their decisions can be automatically appealed. The referees are licensed attorneys who are at-will Metro employees and, at the behest of Judge Green, have juvenile justice experience. The referees' salaries are paid by a state grant. Judge Green stated that she tries to hear all cases involving termination of parental rights and transfers of juveniles to adult court. Judge Green said that she does not initiate transfers; only the District Attorney can do that.

She explained that the Juvenile Court loses jurisdiction over a child at midnight on their 18<sup>th</sup> birthday. Judge Green stated that the most common crimes associated with juveniles are homicides, attempted homicides and robberies. She stated that a juvenile could not be detained unless he commits a crime against a person, so a charge such as burglary would not be a detainable offense. Judge Green explained that once a child goes into state custody, the parents are required to pay support directly to the state rather than the Court. Judge Green said that while she thinks Tennessee is successful in the area of juvenile rehabilitation, she wishes the legislature would understand that the current juvenile code is outdated. She stated that although the code is designed to protect children, today they have no respect for the law and have learned how to "work" the



system. Judge Green said that she is glad that Tennessee has not lowered the age of majority to 15 or 16 years as other states have done, and that a hearing is still required before a juvenile can be bound over to adult court. She explained that juvenile offenders can get more “time” in custody, but that “time” is used proactively by providing services such as getting a GED and counseling.

The last aspect of the jurors visit was a tour of the Detention Center facilities. The jurors were treated to lunch in the cafeteria, which also serves as the classroom for the detainees. Patrick J. Curran III, Superintendent of Group 4 Securicor Youth Services that manages the Center, conducted the tour. Mr. Curran explained that, in addition to being a detention facility, the Center also has a school. Though the school is accredited, it is not considered by Metro to be a regular school and, therefore, receives no funding from Metro. It does receive a Title I grant. Mr. Curran stated that the Center needs more classroom space so that ideally there can be 20 students per room instead of ten.

The jurors visited the holding areas where the detainees are kept. Mr. Curran explained that when the Center was built there were fewer beds than now, and that there were no holding areas designed for female detainees. Currently, there are no real areas designated for females for showering and sleeping, which poses a constitutional issue regarding equal access in facilities. The jurors also saw the medical services area where basic medical treatment is given. The Center has a contract with Matthew Walker Comprehensive Health Center for dental services and Lentz Health Clinic for treating sexually transmitted diseases. It was noted that a detainee can sign for receipt of any psychotropic drugs that may be prescribed to them, but cannot give consent to receive over-the-counter medicines such as ibuprophen.

At the end of the visit, Mr. Curran and other Group 4 staff on the tour wanted to impress upon the jurors that the state needs to establish 24-hour temporary holding facilities or an established holding facility for runaways.

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## RECOMMENDATIONS

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### ADMINISTRATIVE

**The District Attorney's office should consider providing a laptop computer to record the case dispositions during testimony.**

There should be a better way to record the cases than for two jurors to write down the same information in two separate books. The process is distracting and somewhat unfair, since each case deserves the full attention of all the jurors to render an informed decision. Since the docket and indictment cover are done daily, the vote could be recorded in an electronic spreadsheet alongside the corresponding case number and would be the responsibility of one juror rather than two.

**Pay for Grand Jury duty should be increased from \$10.00 per day to \$20.00 per day, with the two secretaries and the author of the Final Report being paid \$25.00 per day.**

The pay for serving on the Grand Jury has not kept up with the rate of inflation, and given the price of gas and the distances some jurors must travel, the current rate of \$10.00 per day does not cover the travel costs. Also, the two secretaries are working to make sure the results of the deliberations are correct, and the author of the Final Report must work after hours to write and edit the report; therefore, an increase in pay should reflect the extra time those jurors put in.

**The waiting process for testifying officers should be more accommodating to their shifts and court schedules.**

Instead of having a one to two-hour wait, a paging system would give officers the option of leaving and attending to additional shift or judicial duties and receiving a page to notify them that their cases will be called within a certain time frame. Also, since some of the officers are either coming off a night shift or starting a day shift, a coffee machine in the waiting area would probably be greatly appreciated.

**Officers should be encouraged to tell all aspects of their cases when testifying.**

Since the Grand Jury is not a formal hearing, hearsay is allowed and officers should feel free to tell all facets of their cases, including the viewpoints of all witnesses and victims, as well as their individual opinions of the merits of the case.



**Metro should be receptive to incorporating public/private initiatives for its judicial functions.**

While the criminal justice system seemingly operates cost effectively, it needs to let private organizations contribute money or services when appropriate. One example was a group willing to put a roof on the outdoor exercise area of the juvenile detention center, but Metro did not want to accept the donation due to liability issues. Metro should be able to address any risks through liability waivers, agreements and other instruments. Another example came from the visit to the Police Training Academy. The officer from the mounted patrol stated that he was responsible for the cost of providing hay and feed for his horse, yet there are many farms in the immediate Davidson County area that would be willing to donate surplus hay. If a private group is willing to provide Metro with valuable services or supplies, it should be allowed to do so.

**Presentations and field trips should be done during the first two weeks of the Grand Jury term so that the jurors can understand the legal/factual issues before they begin hearing cases.**

It would help the jurors to understand all the legal issues that may arise during testimony if they had all presentations and off-site visits before the actual hearings begin. It would make decisions more informed and enable the jurors to ask more detailed questions of the officers. Also, a one-hour "criminal charge and severity primer" from the District Attorney's office to new grand jury members where they could discuss the levels of severity for charges of domestic assault, aggravated assault, assault with intent to kill, as well as common drug charges would be helpful. A brief explanation of the most common charges and what constitutes that charge may help jurors better understand why criminals are charged the way they are. The jurors were fortunate to have the benefit of Foreman Hillenbrand's police knowledge, on which they heavily relied, but this would not be the case for all future juries.

## **LEGISLATIVE**

**The DUI Implied Consent notice read by officers to suspected DUI offenders should be rewritten to provide a simpler explanation of the consequences of not submitting to field sobriety tests, as well as being posted in plain view at all DMV stations.**

During the many DUI cases that the jurors heard, the subject of the DUI Implied Consent notice that is read by the arresting officer to defendants came up frequently. At one point, the jurors had an officer read the notice in its entirety, and concluded that if the wording confused them, than anyone under the influence would be equally confused. The jurors concluded that the legislature should consider rewriting the DUI Consent notice in simpler and more concise language. In addition, the jurors felt that citizens were not as aware of the consequences of refusing the blood/breath tests and, therefore, the notice should be posted in plain view at all Tennessee DMV stations, as well as in PSAs (public service announcements) in the media.

**The legislature should seriously consider rewriting the juvenile code to reflect the changes in juvenile crime.**

Juvenile crimes are not only increasing but also getting much more severe and, as Judge Green admitted, the current code is outdated. Children today face many more adult pressures and circumstances and, as such, many more are committing more adult crimes. The legislature needs to realize that juvenile crime reaches across all sectors of society and that with the influx of information available, children have learned to use the juvenile judicial system to their advantage. The legislature should rewrite the code to deal with the severity of crimes committed by juveniles today and come up with statutes that address prevention, punishment and rehabilitation.

**The Juvenile Detention Center needs to be moved away from the inner city, and its facilities need to be expanded.**

It is apparent that the Center is well maintained and high functioning, but it is woefully inadequate in terms of adequate bed space for males and females, as well as classrooms, and should be moved to an area with more land, more parking and fewer traffic issues. The legislature should demand that Metro develop a long-term plan starting with a needs-based evaluation that includes looking at new facilities constructed in other cities of comparable size.

**The legislature should require mandatory AIDS/HIV testing of all new jail detainees when they are given the standard physical upon arrival.**

It was somewhat disturbing to hear from one of the officers at the DCSO that he did not know whether or not AIDS/HIV testing was routinely done on new detainees when they were given medical exams. Given the prevalence of drug use, prostitution and other risky behaviors on the streets, it is imperative that all defendants be tested for AIDS/HIV for the safety of the staff and other detainees.

**There should be legislation requiring all pawnshops, scrap yards and businesses that buy/sell cars for scrap or parts, check merchandise against all MNPd databases of items reported stolen *before* they buy. In addition, there should be a mandatory 72-hour waiting period before cars brought for scrap or parts are destroyed.**

The jury heard a number of cases where cars had been stolen and taken to scrap yards or auto salvage places such as Pull-Apart to be sold, or other stolen merchandise is taken to be pawned at local pawn shops. From the given testimony by the officers, such businesses do not check to see if the items are stolen before they are sold or destroyed. The legislature should mandate that the MNPd send out a list of all merchandise and vehicles that have been reported stolen to area pawnshops, salvage yards and vehicle parts businesses on a daily basis and that such businesses be required to check any merchandise or vehicle brought in for sale against those lists before they are bought. There should also be a mandatory 72-hour waiting period before any sales transaction is complete or any vehicles sold for salvage are scrapped.

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## CONCLUSION

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Once again, the Grand Jury would like to thank all who work in both the District Attorney's and Judge Fishburn's offices for making this an enjoyable and enlightening experience. Our service has enabled us to view the work of the police and the courts with more depth and understanding than when we started. While we wish we could prolong our term, we hope that the recommendations given here will positively impact the next panel of jurors, as well as the city, the courts and the state.